IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.873 of 2007

***Decided on:* December 31, 2007.**

Takki Mohammad ***…Petitioner.***

VERSUS

State of Himachal Pradesh ***….Respondent.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioners: **Mr N.K.Tomar, Advocate.**

For the respondent: **Mr.M.L.Chauhan, Addl.A.G.**

Kuldip Singh, Judge (Oral)

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in F.I.R. No.57/2007 dated 27.3.2007 under Sections 302, 120/B I.P.C., registered at Police Station, Nahan, District, Sirmaur.

2. Heard and perused the record. It has been submitted on behalf of the petitioner that the petitioner is working as Driver in Himachal Road Transport Corporation and was on duty on the date of alleged occurrence. The petitioner has been falsely implicated in the case and is in custody since 28.3.2007. The petitioner has been arrested simply on suspicion. There is no legal evidence on record to connect the petitioner with the commission of offence. The recoveries on the basis of alleged statements under Section 27 of the Indian Evidence Act attributed to the petitioner are wrong, false and

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Whether the reporters of the local papers may be allowed to see the judgment? Yes

fabricated. The alleged recoveries have been made many days after the alleged occurrence. The petitioner earlier filed an application for releasing him on bail which has been rejected by learned Additional Sessions Judge, Nahan on 9.8.2007.

3. The learned Additional Advocate General has opposed the bail application. He has submitted that the involvement of applicant and other accused, viz. Yusuf Ali has been established in the case. It has come during investigation that father of the deceased Husan Singh had sold land for about 1 crore. The deceased was the only son of his parents. Yusuf Ali was working as driver with the father of the deceased. The petitioner came in contact with the family of the deceased through Yusuf Ali, petitioner is brother in law of Yusuf Ali. Yusuf Ali and petitioner conspired together to eliminate deceased so that they could gradually grab the property of the family. Yusuf Ali had demanded Rs.1 lac from the father of the deceased which deceased opposed. The petitioner took the deceased on the date of occurrence on his motorcycle and at place *Dosadka near Nahan* they purchased liquor, *Namkeen, egg Bhurji etc.* and they took liquor in the jungle before *Khajurna bridge.* At that place, petitioner attacked deceased Husan Singh and killed him, during this process petitioner also sustained injuries on his hand and body for which he got treatment in private hospital and thereafter left from Nahan to Jagadhari.

4. The recovery of *Namkeen, egg Bhurji* was made from the spot. The deceased was lastly seen with the petitioner and on that basis the petitioner was interrogated. On his body scratches and

injury on the hand was found which was stitched. The petitioner was arrested on 28.3.2007. The petitioner made disclosure statement and identified the place of occurrence and also got recovered one knife from his bath room which was blood stained. The petitioner made another disclosure statement and on that basis one half of Indian made foreign liquor, glass and motorcycle used for commission of offence were recovered. From the dickey of motorcycle he got recovered his own clothes which he was wearing at the time of occurrence and were blood stained. He also identified the place from where he purchased liquor, *Namkeen* etc. The other accused Yusuf Ali was arrested on 3.4.2007 and was released on bail by learned Additional Sessions Judge, Nahan. As per report of FSL, Junga, the blood found on the clothes of the petitioner and on recovered knife is of one group. The challan has been filed on 22.6.2007 in the Court.

5. The case is based upon circumstantial evidence. On the basis of disclosure statements of the petitioner, recoveries have been made. Some injuries were also found on the person of petitioner. The allegations against co-accused Yusuf Ali are not so serious. However, allegations against the petitioner are serious and, therefore, keeping in view the facts and circumstances of the case, the petitioner is not entitled to grant of bail at this stage. Hence, the application is dismissed. In pursuance of order dated 24.12.2007, supplementary affidavit has been filed by the Superintendent of Police, Nahan. The explanation given by him is accepted and the show cause proceedings against him are dropped.

6. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

December 31, 2007 ***(Kuldip Singh), J.***

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